

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

GENERAL JURISDICTION
DIVISION

CASE NO: _____

DAVID J. WINKER,

Plaintiff,

vs.

CITY OF MIAMI, a Florida
municipal corporation,

Defendant

COMPLAINT

COMES NOW, the Plaintiff, DAVID J. WINKER (hereinafter “WINKER”), and sues the Defendant, the CITY OF MIAMI, a Florida municipal corporation (hereinafter the “CITY”), for declaratory relief and injunction pursuant to Ch. 86, Fla. Stat., and alleges:

1. This is an action in which the amount in controversy exceeds the sum of \$15,000 exclusive of interest, costs and attorney’s fees.
2. This court has jurisdiction over this action pursuant to § 86.011, Fla. Stat.

3. All conditions precedent to the bringing of this action have either been performed by WINKER or have otherwise occurred.

4. WINKER is, and at all times material hereto has been, a natural person and resident of the CITY and Miami-Dade County, Florida.

5. The CITY is a Florida municipal corporation located entirely in Miami-Dade County, Florida.

6. The CITY's elected governing board is its City Commission (the "CITY COMMISSION").

7. The constitution of the CITY is its charter (the "CHARTER") and the CITY is required to abide by all of the express provisions of the CHARTER.

8. Subpart A, of the CHARTER is the Citizens' Bill of Rights. The Citizens' Bill of Rights provides, in pertinent part:

Remedies for violations. Residents of the City shall have standing to bring legal actions to enforce the City Charter, the Citizens' Bill of Rights, and the Miami-Dade County Citizens' Bill of Rights as applied to the City. Such actions shall be filed in Miami-Dade County Circuit Court pursuant to its general equity jurisdiction and, if successful, the plaintiff shall be entitled to recover costs, but not attorney's fees, as fixed by the court. Any public official, or employee who is found by the court to have willfully violated this section shall forthwith forfeit his or her office or employment.

Subpart A, paragraph C of the CHARTER (Emphasis supplied)

9. The CITY presently owns, and at all times material hereto has owned, certain parcels of real property (the parcels may be referred to individually as a "PARCEL" or collectively as the "CITY PROPERTY") which the Miami-Dade County Property Appraiser has addressed, assigned folio numbers to and shows to contain the following number of square feet:

<u>Address</u>	<u>Folio No.</u>	<u>Lot Size</u>
(None)	30-3129-000-0050	217,800 Sq. Ft (5 acres +/-)
(None)	30-3129-000-0160	87,120 Sq. Ft (2 acres +/-)
1400 NW 37 Avenue Miami, FL 33125-1738	01-3132-000-0080	5,677,174.8 Sq. Ft (130.33 acres +/-)
1500 NW 37 Avenue 1550 NW 37 Avenue 1600 NW 37 Avenue 1800 NW 37 Avenue 1822 NW 37 Avenue Miami, FL 33125-1740	01-3132-000-0090	2,109,175.2 Sq. Ft (48.42 acres +/-)

Total 8,091,270 Sq. Ft. (185.75 acres +/-)

10. Presently the CITY owns and operates a certain country club and golf course named Melreese Country Club (the “MELREESE COUNTRY CLUB”) on approximately 155-158 acres of the CITY PROPERTY.

11. Miami Freedom Park, LLC, (the “COMPANY”), a non-party, is a Delaware limited liability company with its principal place of business located within Miami-Dade County.

12. The CHARTER provides as follows:

Notwithstanding any provision to the contrary contained in this Charter or the City Code, and except as provided below, the city commission is prohibited from favorably considering any sale or lease of property owned by the city unless there is a return to the city of fair market value under such proposed sale or lease. The city commission is also prohibited from favorably considering any sale or lease of city-owned property unless (a) there shall have been, prior to the date of the city commission's consideration of such sale or lease, an advertisement soliciting proposals for said sale or lease published in a daily newspaper of general paid circulation in the city, allowing not less than ninety (90) days for the city's receipt of proposals from prospective purchasers or lessees, said advertisement to be no less than one-fourth (1/4) page and the headline in the advertisement to be in a type no smaller than 18-point and, (b) except as provided below, there shall have been at least three (3) written proposals received from prospective purchasers or lessees; however, if there are less than three (3) such

proposals received and if the guaranteed return under the proposal whose acceptance is being considered is equal to fair market value the city commission determines that the contemplated sale or lease will be in the city's best interest then, subject to the approval of a majority of the votes cast by the electorate at a referendum, the sale or lease may be consummated. Any lease for the development of improvements of city-owned property which has been approved by voter referendum shall require additional voter referendum approval for a development on City-owned property where the developer has not obtained the necessary building permits within four (4) years of the effective date of the lease. Such section shall not be applicable when the delay in the performance of any obligation is as a result of force majeure, or litigation that questions the validity of the vote, or the City Commission action to place the question for referendum, then the performance of such obligation shall be extended by the length of the delay. In the case of city-owned property which is not waterfront, when the value of such property to be sold or leased (individual leaseholds within a single city-owned property shall not be considered as a single parcel of property for such valuation purposes) is five hundred thousand dollars (\$500,000) or less, based on an appraisal performed by a state-certified appraiser, the city commission, by a 4/5ths affirmative vote, may sell or lease said city-owned property after compliance with the advertisement requirements set forth above but without the necessity of a referendum.

*
*
*

Notwithstanding anything herein to the contrary, the city commission, by a 4/5ths affirmative vote, may:

*
*
*

- (e) waive competitive bidding to negotiate and execute a Ground Lease and Master Development Agreement with Miami Freedom Park, LLC, for a total lease term of ninety-nine (99) years, for approximately seventy-three (73) acres of City-owned property located generally at 1400 Northwest 37th Avenue, Miami, Florida 33125, also known as Melreese County [sic] Club, with a minimum annual base rent payable to the City equal to the greater of (a) fair market value as determined by state certified appraisers or (b) five percent (5.0%) of rent from the retail, office, and hotel development within the Demised Property, but annual base rent of no less than three million five hundred seventy-seven thousand three hundred sixty-five dollars (\$3,577,365.00), in addition to a contribution to the City of twenty million dollars (\$20,000,000.00) payable over thirty (30) years

in annual installments, and any rent increases and/or additional rents negotiated by the parties; authorizing the use of the Demised Property for a soccer stadium; with at least one (1) million square feet of art and entertainment center including food and beverage venues, offices, retail, and a hotel with at least 750 units and conference center with ancillary commercial uses, guaranteeing a living wage for all on-site employees, further requiring MFP to undertake the remediation and Site development for a public park of approximately fifty-eight (58) acres to be developed on property adjacent to the Demised Property as MFP's sole cost, with any restrictions, reversions, and retention by the City of all other rights including at least a one (1%) transfer fee payable to the City, with such Lease and Master Development Agreement requiring City Commission approval by a four-fifths (4/5ths) vote.

Section 29-B of the CHARTER (Emphasis supplied)

13. The purported effect of subsection (e) is to allow the CITY COMMISSION to, by fourth/fifths vote, waive the competitive bidding requirements of Section 29-B of the CHARTER for a long term lease of certain property by the CITY to the COMPANY.

14. Upon information and belief, the CITY intends to utilize subsection (e) to waive the competitive bidding requirements otherwise set out in Section 29-B of the CHARTER and negotiate and enter into a lease of a portion of the CITY PROPERTY to the COMPANY.

Count I
Declaring Subsection (e) Vague and Ambiguous

15. WINKER hereby reasserts the allegations of paragraphs 1 through 14 above.

16. The CITY may not lawfully use and rely upon subsection (e) to avoid competitively bidding requirements of Section 29-B of the CHARTER because subsection (e) is vague and ambiguous. Subsection (e) purports to authorize the CITY COMMISSION to waive the applicable competitive bidding requirements and to negotiate and execute a lease, "for approximately seventy-three (73) acres of City-owned property located generally at 1400 Northwest 37th Avenue, Miami, Florida 33125, also known as Melreese County [sic] Club." No

other description of the property to which subsection (e) purportedly applies is provided in the CHARTER.

17. The MELREESE COUNTRY CLUB takes up approximately 155-158 acres of the CITY PROPERTY and lies, at least partially, on each and every PARCEL which makes up the CITY PROPERTY. Neither subsection (e) nor any other part of the CHARTER gives any indication as to which “approximately seventy-three (73) acres” of the MELREESE COUNTRY CLUB subsection (e) applies. In other words, subsection (e) is expressed in terms so vague that persons of common intelligence must necessarily guess at its meaning.

18. As subsection (e) is vague and ambiguous it cannot be used to avoid the competitive bidding requirements which are otherwise required by Section 29-B of the CHARTER.

19. There is a bona fide and actual dispute between the parties and there is a present and practical need for the declaration requested.

20. The dispute set forth herein involves a present, ascertainable set of facts and the rights, powers or privileges of the parties depend upon the facts stated and the law applicable to the facts. The relief sought herein is not sought merely for the purpose of providing legal advice or to satisfy curiosity.

Count II
Declaring that Subsection (e) Is Limited to the PARCEL Designated as
Folio No. 01-3132-000-0080

21. WINKER hereby reasserts the allegations of paragraphs 1 through 14 above.

22. Count II is pled in the alternative to Count I and only in the event that Count I is denied.

23. Subsection (e) provides in pertinent part:

- (e) waive competitive bidding to negotiate and execute a Ground Lease and Master Development Agreement with Miami Freedom Park, LLC, for a total lease term of ninety-nine (99) years, for approximately seventy-three (73) acres of City-owned property located generally at 1400 Northwest 37th Avenue, Miami, Florida 33125, also known as Melreese County [sic] Club,

and then further provides that such lease require the COMPANY to:

undertake the remediation and Site development for a public park of approximately fifty-eight (58) acres to be developed on property adjacent to the Demised Property. . .

Section 29-B of the CHARTER (Emphasis supplied)

- 24. The PARCEL designated as Folio No. 01-3132-000-0080 is:

- A. Addressed as 1400 NW 37th Avenue, Miami, FL 33125; and,
- B. Contains approximately 130.33 acres.

- 25. Subsection (e) provides that:

- A. The “approximately seventy-three (73) acres of City-owned property” is located generally at “1400 Northwest 37th Avenue, Miami, Florida 33125”; and,
- B. The COMPANY is required to develop the adjacent “approximately fifty-eight (58) acres,” into a park. The total of 73 acres and 58 acres is 131 acres ($73 + 58 = 131$).

26. Therefore to the extent that the court finds that subsection (e) is not vague and ambiguous, it should find that the properties which are described in subsection (e) (both the property to be leased and the adjacent property to be developed into a park) are located exclusively in the PARCEL designated as Folio No. 01-3132-000-0080 and addressed as 1400 Northwest 37th Avenue, Miami, Florida 33125.

- 27. There is a bona fide and actual dispute between the parties and there is a present

and practical need for the declaration requested.

28. The dispute set forth herein involves a present, ascertainable set of facts and the rights, powers or privileges of the parties depend upon the facts stated and the law applicable to the facts. The relief sought herein is not sought merely for the purpose of providing legal advice or to satisfy curiosity.

WHEREFORE, WINKER requests this court:

A. Grant Count I and declare that subsection (e) of Section 29-B of the CHARTER is vague and ambiguous and therefore may not be used to avoid the competitive bidding requirements which are otherwise required in Section 29-B, of the CHARTER; and enter its temporary and permanent injunction enjoining the CITY from using or relying on subsection (e), in any way.

B. Alternatively and provided the court does not grant Count I, grant Count II and declare that all of the properties described in subsection (e) of Section 29-B of the CHARTER are contained within the PARCEL designated as Folio No. 01-3132-000-0080; and enter its temporary and permanent injunction enjoining the CITY from using or relying on subsection (e), in any way, except to waive the competitive bidding requirements which are otherwise required in Section 29-B, of the CHARTER with regards to approximately 73 acres of property located in the PARCEL designated as Folio No. 01-3132-000-0080.

C. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

_____/s/_____
David J. Winker, Esq., B.C.S
Fla. Bar. No. 73148
David J. Winker, PA
2222 SW 17th St
Miami, FL 33145
305-801-8700
dwinker@dwrlc.com